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TRANSMITTAL FORM

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		Filing Date	March 7, 2001
		First Named Inventor	John HATHAWAY
		Group Art Unit	3727
		Examiner Name	Robin A. Hylton
		Attorney Docket Number	1104-1165

ENCLOSURES (check all that apply)

☐ Fee Transmittal Form	☐ Assignment Papers	☐ After Allowance Communication to Group
☐ Fee Attached **see PTO-2038 form**	☐ Drawing(s)	☐ Appeal Communication to Board of Appeals and Interferences
☐ Amendment Response	☐ Licensing-related Papers	☒ Appeal Communication to Group (Appeal Notice, Brief, **Appellant's Reply Brief**)
☐ After Final	☐ To Convert a Provisional Application	☐ Proprietary Information
☐ Affidavits/declaration(s)	☐ Power of Attorney, and Correspondence Address Form	☐ Status Letter
☐ Extension of Time Request	☐ Terminal Disclaimer	☐ Additional Enclosure (please identify below)
☐ Express Abandonment Request	☐ Small Entity Statement	☒ Return Receipt Postcard
☐ Information Disclosure Statement	☐ Request for Refund	
☐ Certified Copy of Priority Documents		
☐ Response to Missing Parts/ Incomplete Application	Remarks	
☐ Response to Missing Parts under 37 CRF 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual Name	**James M. Durlacher** **Woodard, Emhardt, Moriarty, McNett & Henry LLP**
Signature	James M. Durlacher
Date	**December 18, 2006**

CERTIFICATE OF MAILING

Express Mail Label No. 747273493 US Date of Deposit December 18, 2006

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR Section 1.10 on the date indicated above and is addressed to the Commissioner for Patents, Board of Appeals and Patent Interferences, PO Box 1450, Alexandria, VA 22313-1450.

Sandra L. Hall

Signature of person mailing paper or fee

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re patent application of:	)
	) Before the Examiner
John HATHAWAY, et al.	)
	) Robin A. Hylton
Serial No. 09/800,793	)
	) Group Art Unit 3727
Filed March 7, 2001	)
	) December 18, 2006
A CLOSURE HAVING AN ANNULAR SEALING BAND FOR PREVENTING LEAKAGE DUE TO PART-LINE FLASH OR SURFACE MISMATCH	)

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
ATTN: Board of Patent Appeals
And Interferences

APPELLANT'S REPLY BRIEF

Express Mail Label No. 747273493 US Date of Deposit December 18, 2006

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Sandra L. Hall
Signature of person mailing paper or fee

I. INTRODUCTORY COMMENTS

This Reply Brief is in response to the Examiner's Answer filed October 20, 2006. As this Reply is being filed under a certificate of Express Mail dated December 18, 2006, no additional fees appear due. However, if any fees are required regarding the filing of this Reply, please charge such fees to our Deposit Account No. 23-3030. It is also noted that a second Examiner's Answer was filed November 13, 2006. The only difference noted between these seemingly identical versions is on page 5 of the second version (November 13, 2006). On page 5, one sentence was added under Section (11). This addition is non-substantive and thus the October 20, 2006 date has been used to determine the deadline to file this Reply Brief.

II. APPELLANT'S REPLY TO EXAMINER'S ANSWER

Appellants contend that combining the conventional closure with Williams, as proposed by the Examiner, is improper. Alternatively, Appellants contend that the combination of the conventional closure with Williams does not teach the claimed invention.

A. IMPROPER COMBINATION

There is no suggestion or motivation to combine a conventional closure with Williams. The conventional closure teaches and requires removing part-line flash from plastic closures by means of a secondary removal process. Because the part-line flash is removed, the conventional closure has an adequate seal. It is, therefore, unnecessary to combine it with another reference dealing with improving seals. Accordingly, one skilled in the art would have no motivation to combine the conventional closure with Williams. Williams does not make any mention of a part-line flash sealing issue or problem and, accordingly, Williams does not direct any of its disclosed structure to solving that problem or even addressing that problem in any manner. Why, then, would a person of ordinary skill in the art ever be directed or motivated by Williams to consider its structure as a solution to the part-line flash sealing issue of a plastic closure, configured for threaded engagement?

Williams does not suggest or teach part-line flash or surface mismatch, it does not teach a molded plastic construction, and it does not teach threaded engagement. Williams only discloses adding an annular bead to overcome vacuum sealing problems associated with dimensional irregularities caused in manufacturing glass closures and glass jars, such as the glass closures

being out-of-round. Glass closures are manufactured differently from plastic closures. Plastic closures are produced in dies, which is what causes the part-line flash and surface mismatch. Whereas, glass closures typically do not use dies, so no part-line flash or surface mismatch is created. Therefore, there is no suggestion or motivation to combine the conventional plastic closure with Williams.

Williams discloses a glass jar (4) and a glass closure member (7) that is constructed and arranged to be "forced inwardly" and thereby deform the gasket (11), as illustrated in FIGS. 1 and 4. The closing process of being forced inwardly, like a plug, is completely different from threaded engagement, as required by claim 3 of the subject patent application. Why would anyone of ordinary skill be motivated to try and export some feature out of a push-in type of closure for use with a threaded combination? Perhaps more to the point, why would anyone of ordinary skill be motivated to do so in order to try and solve a problem that does not and cannot exist in the particular item of prior art (?) being relied upon?

B. FAILS TO TEACH ALL CLAIMED LIMITATIONS

Even if one could assume that the combination is proper, the combination fails to teach all of Appellants' claimed limitations. Because the conventional closures remove part-line flash and/or surface mismatch and Williams does not have part-line flash and/or surface mismatch, the resultant combination teaches a closure **without** any part-line flash or surface mismatch. It does not teach a plastic closure with part-line flash or surface mismatch as required by Appellants' claims. Suggesting otherwise improperly adds the part-line flash or surface mismatch back. Clearly, therefore, the combination of the conventional closure with Williams fails to teach all of

the Appellants' claimed limitations. As noted, Williams fails to teach threaded engagement and fails to teach a plurality of annular sealing bands "through at least a portion of said part-line flash".

The most that anyone might glean from Williams is that forming an annular rib so as to reduce the radial width of a clearance space is one way to compress an annular gasket against an outer surface. Starting with a gasket of a known thickness and deflecting it into a space, the degree of compression, if any, depends on the radial width of that space relative to the thickness of the gasket. This particular analysis says absolutely nothing about where to position the annular rib and it says absolutely nothing about any part-line flash. How does anyone learn from Williams that the location of increased gasket compression should coincide with the location of the "non-existent" part-line flash?

Applicants' sealing beads are described in claim 3 as engaging the gasket to prevent leakage between the plastic closure and the gasket due to part-line flash or surface mismatch. In Williams, the gasket (11) is mounted in groove (10) and this is the focus of any sealing between the gasket and the glass closure. Any number of suitable compounds can be used to achieve a secure "mounting". Accordingly, the design and positioning of bead (12) is not concerned with sealing between the gasket and the closure at that location, only about sealing between the gasket and the jar. In fact, the entirety of any discussion about any sealing between the gasket and the closure in Williams is found on page 2, in lines 40-44. This one sentence reads as follows:

> "It will be noted that, in this position, the bead 12 will squeeze into the gasket 11 and press the same against the internal surface of the mouth of the jar, and thus ensure an effective seal."

C. RESPONSE TO EXAMINER'S ARGUMENT

The Examiner argues that it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of at least one sealing band to the sealing surface of the conventional known closure disclosed by Appellants as taught by Williams. To support this conclusion the Examiner offers the following: "doing so would correct for defects of the closure and associated container opening to provide a more reliable seal without the necessity of removing the part-line flash." While this statement may be true, it is nevertheless a conclusory statement. First, the Examiner does not properly identify the teaching, suggestion, or motivation found in either reference that leads one to combine the references. Second, the Examiner does not properly identify how the references teach using sealing bands on sealing surfaces of plastic closures to overcome removing part-line flash.

The Examiner states that the factual evidence to support this rejection lies in the teachings of the conventional closure having a part-line flash and the closure of Williams. The Examiner, however, has failed to identify the factual evidence or where it can be specifically found. Failing to do so precludes the Appellants an opportunity to respond properly. The inability of the Examiner to do so is consistent with the numerous deficiencies of Williams, as noted above.

Further, the Examiner argues that Appellants' statement that the conventional closure and Williams do not teach all of the claimed limitations is erroneous. However, in contravention to MPEP §1208, the Examiner fails to point out where each of the specific limitations recited in the rejected claims is found in the prior art. Further, because the Examiner's rejection is based upon a combination of references, the Examiner must explain the rationale for making the

combination. This rationale must consist of more that "the sealing bead is effective in negating the additional manufacturing step of removing the part-line flash," which is Appellants' invention.

Finally, the Examiner offers U.S. Patent No. 5,320,236 to Gregory as further evidence of using a bead to engage a gasket for an effective sealing engagement between a closure and an associated container. Appellants must assume that the Examiner cited this new reference, which was not cited previously, as evidence of the prior well known statement made by the Examiner. The Examiner states that Gregory provides support for "using a bead to engage a gasket for an effective sealing engagement between a closure and an associated container." Gregory provides no such support. Even if it did, the claimed invention focuses on the effective sealing between the gasket and the closure. This is the critical interface location in terms of the part-line flash. Gregory discloses, as does the conventional closure, performing an additional manufacturing process to trim off material from the sealing surface of the container, see column 2, lines 35-38. Additionally, Gregory discloses an annular flange that engages the **top** surface of the plastic container 12, not the sealing surfaces of the closure, as required by Appellants' claims. Appellants, therefore, are unsure as to why the Examiner cited this reference.

III. CONCLUSION

In light of the foregoing, Appellants contend that the Examiner's rejection of claims 3-14 under 35 U.S.C. §103(a) is improper, and that claims 3-14 are in condition for allowance. Therefore, Appellants respectfully request the present application be remanded to the Examiner for allowance of claims 3-14.

Although no fee is believed to be required for submission of Appellant's Reply Brief, please charge any fees which are due to Deposit Account No. 23-3030.

Respectfully submitted,

By James M. Durlacher

James M. Durlacher, Reg. No. 28,840
Woodard, Emhardt, Moriarty,
McNett & Henry LLP
111 Monument Circle, Suite 3700
Indianapolis, Indiana 46204-5137
(317) 634-3456
Attorney for Appellants